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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-21-0240

Lane Alexander Corbitt

v.

State of Alabama

Appeal from Jackson Circuit Court
(CC-18-891; CC-18-893; CC-19-442; CC-19-444)

KELLUM, Judge.

The appellant, Lane Alexander Corbitt, appeals from the Jackson Circuit Court's revocation of his community-corrections sentence.

The record indicates that in November 2018 Corbitt pleaded guilty to theft of property in the first degree and burglary in the third degree.

The circuit court sentenced Corbitt to 16 years' imprisonment for the first-degree-theft conviction and to 10 years' imprisonment for the third-degree-burglary conviction. The circuit court split those sentences and ordered Corbitt to serve three years' imprisonment for the theft conviction and two years' imprisonment for the burglary conviction followed by three years supervised probation. In November 2019, Corbitt pleaded guilty to two counts of burglary in the third degree. The circuit court sentenced Corbitt, as a habitual felony offender, to 15 years' imprisonment. While in prison, Corbitt moved for relief from his sentence of incarceration. On July 2, 2021, the circuit court entered an order approving Corbitt's placement in the Marshall County Community Corrections and amended the previous sentencing orders entered "to reflect that [Corbitt] is to serve the sentence(s) imposed ... in the physical custody of the Marshall County Community Punishment and Corrections Authority's Work Release Program as an Alabama Department of Corrections Inmate, so long as [Corbitt] abides by the rules and regulations of the Marshall County Community Corrections." (C. 33-34.)

On October 7, 2021, a delinquency report was submitted alleging that Corbitt failed to comply with the rules of the Marshall County

Community Punishment and Corrections Authority work-release program ("community corrections"). Specifically, the report stated "10/05/2021 Inmate Lane Corbitt was unaccounted for a period while at Tyson [chicken-processing plant]." (C. 29-31.) On December 15, 2021, the circuit court conducted a revocation hearing at which Corbitt was present and represented by counsel. At the hearing, the State presented the testimony of one witness, Marcheta Shaw, the executive director of the Authority. Shaw testified that Corbitt was placed in community corrections in July 2021. Corbitt worked at the Tyson chicken-processing plant in Albertville. Shaw testified that community-corrections employees transported Corbitt to and from the Tyson plant. According to Shaw, Corbitt was dropped off at the plant on October 5, 2021, to work. Shaw testified:

"We got a call saying that [Corbitt] had gotten in a white sedan and left the parking lot on that day at 7:48 p.m.

"Going back to his timecards, he had clocked out that same day at 7:27 p.m., and then he did not call in to the facility to be picked up until 9:08 p.m."

(R. 11.) According to Shaw, participants in the work-release program were not allowed to leave the premises of their work assignment and

leaving without permission was considered a violation of conditions of the program.

On cross-examination, Shaw testified that the Tyson plant manager, Randall Brown, telephoned her office regarding the violation. However, Shaw had not spoken to anyone at the Tyson plant about the incident or the facts alleged against Corbitt. Shaw acknowledged that she had no personal knowledge of what happened on October 5, 2021. Shaw stated that she received all the information about the violation from the plant manager. When asked on cross-examination, "So as this stands, we have zero personal knowledge that could come from you as it relates to any violation of anything regarding your program," Shaw replied, "Yes." (R. 17.)

On December 22, 2021, the circuit court entered an order revoking Corbitt's placement in the community-corrections program and ordered Corbitt to serve the balance of his sentence in the custody of the Alabama Department of Corrections. This appeal followed.

We first note that the revocation of a sentence served under a community-corrections program is treated the same as a probation revocation. See § 15-18-175(d) (3)b., Ala. Code 1975 ("A revocation

hearing shall be conducted before the court prior to revocation of the community corrections sentence. The court shall apply the same due process safeguards as a probation revocation proceedings and may modify or revoke the community punishment sentence and impose the sentence that was suspended at the original hearing or any lesser sentence...."); Richardson v. State, 911 So. 2d 1114 (Ala. Crim. App. 2004) (treating the revocation of a community-corrections sentence as a probation revocation).

I.

On appeal, Corbitt contends that the circuit court abused its discretion by revoking his community-corrections sentence because, he argues, he was not provided adequate notice of the charges against him.

This Court has previously stated:

"Regarding minimum due-process requirements for probation-revocation hearings, this Court reiterated in Hollins v. State, 737 So. 2d 1056, 1057 (Ala. Crim. App. 1998), that

"[t]he minimal due process to be accorded a probationer before his probation can be revoked includes written notice of the claimed violations of probation, disclosure to the probationer of the evidence against him, an opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and to

cross-examine adverse witnesses, a neutral and detached hearing body such as a traditional parole board, and a written statement by the factfinders as to the evidence relied on and the reasons for revoking probation.'"

Powell v. State, 140 So. 3d 487, 490 (Ala. Crim. App. 2013). See also Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrissey v. Brewer, 408 U.S. 471 (1972); McCoo v. State, 921 So. 2d 450 (Ala. 2005); Armstrong v. State, 294 Ala. 100, 312 So. 2d 620 (1975); and Rule 27, Ala. R. Crim. P. "The purpose of giving a probationer such notice is to give him or her 'a reasonable opportunity to prepare.' Boles v. State, 717 So. 2d 877, 880 (Ala. Crim. App. 1998) (discussing the reasonableness of the timing of notice)." Thomas v. State, 768 So. 2d 1016, 1018 (Ala. Crim. App. 2000). "The notice should contain the charges in language that an ordinary person could understand." Sheffield v. State, 445 So. 2d 989, 991 (Ala. Crim. App. 1984) (citing Donaldson v. State, 435 So. 2d 223 (Ala. Crim. App. 1983)).

Corbitt argues that the Alabama Supreme Court's decision in Ex parte Wayne, 292 So. 3d 1036 (Ala. 2019), requires a reversal in this case. In Wayne, the circuit court conducted an initial-appearance hearing at which Wayne was informed that she was being charged with violating

the terms and conditions of her probation for, among other things, failing to report. The charges were also set forth in a delinquency report. Following a probation-revocation hearing, the circuit court revoked Wayne's probation based on the charge of absconding, a charge that was not mentioned at the initial-appearance hearing or included in the delinquency report. On appeal, the Supreme Court concluded that Wayne did not receive proper written notice that she was being charged with absconding. In so holding, the Court recognized that

""[n]otice of violations of probation is given the probationer so that he may have adequate time to prepare to refute the charges against him. Spann v. State, 426 So. 2d 492 (Ala. Crim. App. 1982)." Sheffield v. State, 445 So. 2d 989, 991 (Ala. Crim. App. 1984)."

Ex parte Wayne, 292 So. 3d at 1041 (quoting Gholston v. State, 507 So. 2d 1054, 1055-56)).

In this case, unlike in Wayne, Corbitt received written notice that he failed to comply with the community-corrections rules. Specifically, Corbitt received a delinquency report alleging that on October 5, 2021, he was unaccounted for a period of time while at Tyson. Although the delinquency report was lacking in specific details, the written notice provided enough information for Corbitt to know that the time he was

unaccounted for at work was the alleged violation. Based on the foregoing, we conclude that Corbitt received adequate written notice of the alleged violation such that he had adequate time to prepare to refute the charge against him. See Wayne, supra.

II.

Corbitt also contends on appeal, as he did below, that the circuit court abused its discretion by revoking his community-corrections sentence based solely on hearsay evidence. The State concedes that the evidence presented at the revocation hearing was entirely hearsay evidence and asserts that "the trial court exceeded the scope of its discretion in revoking [Corbitt] from community corrections" based on the evidence presented at the hearing. (State's brief, p. 8.) We agree.

"It is well settled that hearsay evidence may not form the sole basis for revoking an individual's probation." Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999) (citing Clayton v. State, 669 So. 2d 220 (Ala. Crim. App. 1995)). However, "hearsay evidence is admissible in a revocation proceeding," Beckham v. State, 872 So. 2d 208, 211 (Ala. Crim. App. 2003), and a combination of both hearsay and nonhearsay evidence may be sufficient to warrant revocation. See, e.g., Askew v. State, 197

So. 3d 547, 548-49 (Ala. Crim. App. 2015). "[W]hen the State presents a mixture of hearsay and nonhearsay evidence to show that a defendant violated his probation by committing a new offense, the circuit court cannot revoke a defendant's probation for that violation unless the nonhearsay evidence connects the defendant to the alleged offense." Walker v. State, 294 So. 3d 825, 832 (Ala. Crim. App. 2019) (emphasis in original).

In this case, the State presented only hearsay evidence to support a finding that Corbitt violated the terms and conditions of his community-corrections sentence by being unaccounted for while at his job site. At the revocation hearing, the State presented the testimony of one witness who, by her own testimony, had no firsthand, personal knowledge of Corbitt's violation. Shaw, as the executive director of the community-corrections program, testified that the Tyson plant manager telephoned someone in the community-corrections office to report Corbitt's violation. Shaw was not present when the violation occurred and she did not speak to anyone directly at the plant regarding the violation. Any knowledge Shaw had regarding the specifics of Corbitt's violation came from a third person whose testimony was not offered at

the revocation hearing. In short, the State offered no nonhearsay evidence to corroborate Shaw's testimony.

Because the State failed to present any nonhearsay evidence to establish that Corbitt had violated the terms and conditions of community-corrections sentence, the circuit court erred in revoking Corbitt's community-corrections sentence. Accordingly, this Court reverses the circuit court's order revoking Corbitt's community-corrections sentence and remands this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and McCool, Cole, and Minor, JJ., concur.